

REMARKS

Claims 8 – 13, 15, 16, 23, 25, 26 and 108 – 114 are now pending in the application, with claims 17 – 21 having been withdrawn, and claims 1 – 7 and 14, 22, 24 and 27 – 107 having been cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 14 and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicants regard as the invention. This rejection focuses on claim 14, with claim 15 being rejected because it depends from claim 14. Applicants have cancelled claim 14, rendering this rejection moot, and amended claim 15 amended so that it now depends from claim 10.

REJECTION UNDER 35 U.S.C. § 103

Claims 8 – 12, 14 – 16, 22 – 24, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clements (US 3,113,735) in view of Reaux (US 3,439,878). Claims 16, 25 and 108 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clements in view of Applicant's Admitted Prior Art (claims 16 and 25) and the Examiner's Official Notice that forging, casting or machining the impact members is obvious (claim 108). Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Clements in view of Reaux and further in view of Niekamp et al. (US 3,113,735).

Claim 8 is the independent claim. Applicants have amended claim 8 and submit that as amended, claim 8 is allowable over Clements in view of Reaux.

Applicants have amended claim 8 to incorporate limitations of claim 22. Applicants have also amended claim 8 to clarify that it is the impact member that shears the food waste -- deleting the recitation that at least one first portion of the rotatable member shears over at least some of the apertures in the stationary plate to shear the food waste. Applicants also deleted the limitations directed to the impact member being movable as well as having an elongated throughhole as being unduly limiting. Amended claim 8 now requires that the impact member have a bottom edge or surface that during operation of the food waste disposer shears over at least some of the apertures in the stationary plate to shear the food waste and also have an outer end that during operation of the food waste disposer passes adjacent an inner wall of a stationary ring disposed about the stationary plate to grind the food waste. Applicants submit that neither Clements nor Reaux disclose or suggest a food waste disposer that both shears food waste and grinds food waste, let alone the structure required by claim 8 to do so.

Turning first to Clements, which the Examiner has cited as disclosing all the elements of claim 8 other than the now deleted limitation directed to the elongated hole in the impact member, applicants submit that Clements discloses a food waste disposer that grinds food waste but does not disclose a food waste disposer that also shears food waste. That is, a stationary portion of Clements' disposer has shredding or grinding pads 60, 61 welded or otherwise attached to an interior wall of the hopper. [Col. 3, lines 1 – 5] The movable portion of Clements' disposer has impellers 98, 99 the distal ends 78, 79 of which fly outwardly during operation of Clements' disposer into

communiting relation with the stationary shredding means 60, 61. [Clements, col. 4, lines 19 – 22]. But there is no discussion in Clements about impellers 98, 99 also shearing the food waste. While the Examiner cites impellers 98, 99 as shearing over holes 74 to shear the food waste, applicants submit that Clements does not support this interpretation. Clements does not disclose that holes 74 coact with impellers 98, 99 to shear food waste. Rather, the only discussion about holes 74 is that they provide a passage through which water and communitied waste pass to the drainage chamber 39. [Clements, col. 3, lines 12 – 17]. Also, as can be best seen from Fig. 2 of the drawings, Clements shows that the distal ends 78, 79 of impellers 98, 99 at best barely pass over the inner edges of holes 74. Given that the only discussion in Clements of the purpose of holes 74 is to provide a passage into the drainage chamber for water and communitied waste and that the drawings at best show that the distal ends 78, 78 barely pass over the inner edges of holes 74, applicants submit that Clements does not disclose or suggest shearing food waste, let alone by a bottom surface or edge of an impact member shearing over apertures in a stationary plate. Applicants thus submit that Clements thus does not disclose or suggest the limitations of amended claim 8 that require both grinding and shearing food waste, and in particular does not disclose or suggest shearing the food waste by a bottom surface or edge of an impact member shearing over apertures in a stationary waste. Similarly, applicants submit that Reaux, while it discloses a disposer that grinds food waste, does not disclose a disposer that both grinds and shear food waste, and the Examiner does not cite Reaux as disclosing a disposer that both grinds and shears food waste. [See, Reaux, col. 4, lines 6 – 9] For these reasons, applicants submit that amended claim 8 is allowable over Clements

combined with Reaux. (Niekamp et al. also does not show a food waste disposer that both grinds and shears food waste.)

Applicants also submit that amended claim 8 does not present any new issues as the amendments to it simply added limitations of claim 22 and otherwise were clarifying amendments and deletions of previously added limitations.

The remaining claims, claims 9 – 13, 15, 16, 23, 15, 26 and 108 -114 depend directly or indirectly from amended claim 8 and are allowable for at least that reason.

With regard to the Examiner taking Official Notice that separation distances of 0 – 2 mm are common knowledge, since Clements does not, as discussed above, disclose that impellers 98, 99 shear over holes 74, applicants submit that the Examiner's position that separation distances of 0 – 2 mm are common knowledge is not well taken. Lacking a reference that teaches shearing by an impact member shearing over apertures, applicants submit that it is inappropriate for the Examiner to take Official Notice that separation distances of 0 – 2 mm are common knowledge.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner

believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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